

DOCKET NO. 2011-55-C

**Jacobs-Rabons Communi-
cations, LLC,
Defendant/Respondent.**

DOCKET NO. 2011-55-C
DOCKET NO. 2011-63-C

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INTRODUCTION

This matter comes before the Public Service Commission of South Carolina by way of the above-referenced Docket No. 2011-55-C and incorporates by reference Docket No. 2011-63-C in its entirety. These two dockets are combined for the purposes of this Motion to Dismiss the Complaint and Request to Hold Testimony Filing Deadlines and Hearing Dates in Abeyance Pending Resolution of this Motion.

Pursuant to S. C. Code Ann. Regs. 103-601 and applicable South Carolina law, Jacobs-Rabons Communications, LLC ("Jacobs-Rabons" or "the Company") hereby moves the Public Service Commission of South Carolina ("PSC" or "the Commission") to dismiss the two above-captioned matters in Docket 2011-55-C and by reference Docket No. 2011-63-C for lack of jurisdiction and regulatory authority, failure to state a claim upon which relief can be granted, and because there is no active case in controversy as to technology fees.

Jacobs-Rabons also respectfully requests the Commission hold the testimony filing deadlines and hearing dates, as set forth in the two Scheduling Notices in both referenced dockets, in abeyance pending the Commission's review and consideration of the Company's motion.

For the reasons set forth below, Jacobs-Rabons respectfully submits that the two referenced Complaints/Dockets should be dismissed as a matter of law as they fail to assert any claims within the jurisdiction of the Commission, they do not articulate any claims upon which relief can be granted to the Complainants by this Commission and because there is no active case in controversy as to technology fees.

ARGUMENT

Because the PSC is an administrative agency and its existence and jurisdiction are established by statute, the Commission is a creature of limited power and jurisdiction that is conferred either expressly or impliedly by the South Carolina General Assembly.

I. These two Complaints Fail to State a Claim Subject To The Commission's Jurisdiction

The subject of the two complaints referenced in the two aforementioned dockets is a technology fee assessed by the Rabon Farms Homeowners Association to the residents (homeowners) of Rabon Farms, a subdivision located in Richland County, South Carolina. According to the South Carolina Code of Regulations, specifically Section 103-601, the PSC does not have jurisdiction or regulatory authority over homeowners associations so therefore the PSC would have no jurisdiction or regulatory authority over any fees assessed by the Rabon Farms Homeowners Association ("HOA"). Indeed, the Complainants have failed to make the HOA a party to these Complaints.

Both Complainants wrongly assert that Jacobs-Rabons is sending out letters to residents informing them of the assessment of a technology fee. The relief requested by both Complainants is for Jacobs-Rabons to stop collecting funds. The Rabon Farms HOA is the entity that assesses the technology fee which is complained of and the Commission has no jurisdiction or regulatory authority over a homeowners association.

The subject of these two complaints, the matter of technology fees being assessed to residents and homeowners in Rabon Farms, is in the process of being totally resolved in the near future .The developer of Rabon Farms and Jacobs Creek,

LLC entered into two Preferred Provider and Marketing Agreements with Time Warner Cable on November 24, 2010, in which Time Warner Cable ("TWC") was granted the right to offer and provide all services that TWC can provide over its system to the residents of these two subdivisions. In a memorandum dated 12/22/10 (included as part of both dockets), the Rabon Farms HOA advised Rabon Farms homeowners and residents that TWC would soon be the "preferred provider" for multi-channel video, high-speed data, phone and other services in Rabon Farms and Jacobs Creek and that the technology fee that was a part of their quarterly assessment "will no longer be charged by the Association." As a matter of fact, Jacobs-Rabons will cease to exist when the transition to TWC is completed and no technology fee will be assessed by the HOA. If the HOA is not assessing a technology fee, there is no active case in controversy when the transition to TWC is accomplished.

A status conference call on the two above-referenced complaints, with all parties participating, was held on February 14, 2011, with Josh Minges, Commission Hearing Examiner. It was stated on the record during the conference call with Mr. Minges that when the transition to Time Warner Cable is completed, the Rabon Farms Homeowners Association will no longer be assessing Rabon Farms homeowners a technology fee which is the subject of these two complaints. Recent reports from TWC indicate this transfer in the Rabon Farms subdivision will take place prior to March 31, 2011, barring any unforeseen construction difficulties. The issue of technology fees then becomes a moot point. Therefore, there is no active case in controversy in these matters as to technology fees.

Exhibit A to this Motion, a letter of 12/22/10, from the Rabon Farms Homeowners Association to Rabon Farms homeowners , specifically paragraph 3, informs the homeowners that "the Technology Fee that is a part of your quarterly assessment will no longer be charged by the Association." This two page letter is also included as part of the complaint in both dockets. See Exhibit "A."

The Commission does not have jurisdiction or the regulatory authority to grant the relief requested in both Complaints. Neither Complaint has asserted a claim that is within the Commission's jurisdiction. There is no active case in controversy because the technology fee that is the subject of these two complaints will no longer be assessed when TWC takes over the system, an event anticipated to take place in Rabon Farms before March 31, 2011, barring unforeseen construction difficulties.

Therefore, no facts or allegations have been asserted that could form the basis for any claim of relief so there is nothing for the Commission to adjudicate. As such, both Complaints should be dismissed as a matter of law.

II. The Testimony Filing Deadlines and Hearing Date Should Be Held in Abeyance Pending The Commission's Consideration of the Present Motion

Jacobs-Rabons respectfully requests that the Commission hold the dates set forth in the Scheduling Notices in both dockets issued by both Hearing Examiners on February 7, 2011, and February 14, 2011, in abeyance pending its review of this motion. Jacobs-Rabons submits that the filing of testimony by it, the Office of Regulatory Staff and the Complainants will be unnecessary if the motion is granted,

and as such, the parties should only be required to proceed with such filings in the event that the motion is denied.

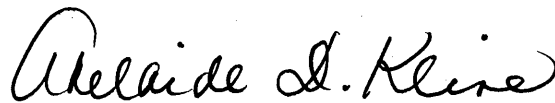
CONCLUSION

For the reasons set forth above, Jacobs-Rabons respectfully requests the Commission dismiss both Complaints in both dockets as they fail to state claims subject to the Commission's jurisdiction, they fail to state claims upon which relief may be granted by this Commission and there is no case in controversy as to technology fees.

Dated this 17th day of February, 2011.

Respectfully submitted,

DOUGALL & COLLINS

A handwritten signature in cursive script that reads "Adelaide D. Kline". The signature is written in black ink and is positioned above a horizontal line.

Adelaide D. Kline
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EXHIBIT “A”

Rabon Farms

Homeowners Association

to MOTION TO
DISMISS

Memorandum

To: Rabon Farms Homeowners
From: Rabon Farms Homeowners Association
Date: 12/22/2010
Re: Annual Assessment for 2011

Attached please find the 2011 Budget with notes, a generic invoice for your 2011 Assessment (please provide the information requested on the invoice and return a copy of the invoice with your payment), an additional invoice (where applicable) reflecting any credit or past due amount, and a payment booklet to help you keep track of the payments you make throughout the year.

Please be aware that agreement was recently reached with Time Warner Cable to begin providing "Bundled Services" (cable, internet and phone service) to the community. It is anticipated that the change in providers will occur during 2011 and that it will be beneficial to all concerned. You will receive further correspondence related to this transition and how it will affect you, as the process of transfer unfolds. The first step in this process will be the installation of additional infrastructure that will allow Time Warner Cable to provide these services. Time Warner is in the process of designing the system at present and it is expected that you will see their construction crews in the community very soon.

When Time Warner Cable becomes a provider (sometime after the infrastructure changes are complete), they will also start to maintain the infrastructure that they will have installed. At that point, the Technology Fee that is a part of your quarterly assessment will no longer be charged by the Association. You are, however, required to continue to pay the Technology Fee until the transfer is complete, which will allow the current provider (JR Communications) to continue to maintain the existing infrastructure until the transfer occurs. Please know that the Association plans to aggressively attempt to collect both current and past due Technology Fees and that the transfer of responsibility will in no way affect a lot owners obligation to pay these fees to the Association for any period prior to the point when the fees are discontinued.

These Regular Assessments help to defray the costs of operating and insuring the Association, and help to cover some of the cost of the utilities, maintenance of the common areas, landscaping, irrigation, and lighting that are the responsibility of the Association. Accordingly, this assessment applies to all Association members. Unless your 2010 Assessment was collected from closing, any payments made from closings in 2010 were applicable to that year only. The Association's fiscal year runs from January 1st to December 31st of each year.

Please note that for 2011 the Annual Assessment that you are being charged is \$595.00. You should note from the Budget that for 2011, that the Association has again decided to split the Annual Assessment into four (4) quarterly installments. As stated above, until you are notified otherwise, you will continue to pay a Technology Fee as part of your assessment. This fee will be passed on to JR Communications, who provides maintenance of the current infrastructure that carries the bundled services. As was the case in 2010, if you have signed on for bundled services from the current provider, you will be given a credit on your monthly bill that equals what you pay to the Association for that month. This will continue until Time Warner Cable becomes the provider of Bundled Services. As before and until you are notified otherwise, this means that you get a credit monthly, but pay the same amount as three (3) months of this credit to the Association in your quarterly payment to the Association. Since this funding supports the infrastructure that allows the bundled services to be available to all lot owners throughout the community, if you have not signed on for Bundled Services, you will receive no credit, but will still be required to pay the Technology Fee as part of your quarterly assessment. When the transition is completed, the assessment that you pay will also be reduced along with everyone else.

Though a quarterly payment schedule will be utilized by the Association for 2011, the Association may revert to an annual payment schedule beginning in 2012. Please note that the due dates for your 2011 quarterly installments toward the Annual Assessment are **January 1st, April 1st, July 1st and October 1st**. You will not receive additional billing for these installments, unless you become delinquent, so mark your calendar for these payments. The Declaration (Covenants or Restrictions) automatically makes anyone who owns a lot in Rabon Farms a member of the Association and creates a foreclosable lien on each lot in the community to aid the Association in collecting the Annual Assessments. Assessments are also a personal and legal obligation of each owner of a lot or home.

The Board of the Association has retained MJS Inc., an association management company, to act as Treasurer of the Association and to manage most of the Association's financial activities. Some of their responsibilities include: sending out this Assessment Notice, the collection of Assessments, payment of the normal expenses of the Association and the keeping of records for all of these activities. They also provide attorneys with information with respect to the payment of assessments and update the Association's database when closings in Rabon Farms occur.

MJS Inc. is gathering the names of homeowners who would like to help us organize the Association and develop a committee structure made up of homeowners. This organizational process requires the substantial involvement of a number of homeowners in order to be successful. When MJS Inc. is instructed to do so by the Board of Directors, homeowners who have indicated their interest will be contacted and the process will begin. At some point thereafter and when the structure of the Association is more complete, MJS Inc. will move the Association toward a Special Meeting where a new Board of Directors will be elected by the membership. If you are interested in helping us with this process, please check the appropriate box located on the invoice so that when the process begins, you can be contacted.

The Association has the authority to enforce violations of the Restrictions and to "architecturally" control any structure that has been built or that is to be constructed on a lot within Rabon Farms. Applications for approvals required by the governing documents should be filed with the Rabon Farms Homeowners Association through MJS Inc. at the numbers and address listed below.

The Association received several complaints this year in reference to parking and pet violations. All passenger vehicles are to be parked within the garages or in a driveway. Parking on landscaping or on the street is strictly prohibited. If street parking must be utilized temporarily please ensure that the vehicle is located in a manner that prevents hazardous conditions. All lot owners are required to properly maintain their pets to include controlling noise from pets, cleaning up any fecal deposits during walking and proper containment (leashed during walking and securing while on the lot).

All checks should be made payable to **Rabon Farms HOA** and mailed to the Association at **4910 Trenholm Road, Suite C, Columbia, S.C., 29206** (close to Trenholm Plaza). MJS Inc. can be contacted at (803) 743-0600 by phone or by fax at (803) 790-0340 during normal business hours (9:00 AM to 5:30 PM, Monday through Friday). Their e-mail address is **mjs@mjsmgt.com**.

Thank you in advance for your attention to this matter.